

AGREEMENT BETWEEN THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT AND THE GOVERNMENT OF THE REPUBLIC OF MALI ON THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT AND THE GOVERNMENT OF THE REPUBLIC OF MALI HEREINAFTER REFERRED TO AS THE "CONTRACTING PARTIES"

DESIRING to reinforce their economic cooperation creating favourable conditions for the realization of investments by investors of either Contracting Party in the territory of the other Contracting Party,

RECOGNIZING the need of encouragement and protection of the economies of both Contracting Parties in order to achieve the prosperity of both countries.

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means any asset and any direct or indirect contribution to any company or enterprise in any economic activity sector, including, but not limited to:

- a) Movable and immovable property as well as all other similar fruits and rights;
- b) Shares and other forms of participation in companies;
- c) Claims and rights to all benefits having economic value;
- d) Copyrights, trademarks, patents technical processes, trade names and all other industrial property rights as well as goodwill;
- e) The public law concessions, including the concessions to search, extract and exploit natural resources.

No change in the legal form in which assets and capital have been invested or reinvested shall affect their character of investment within the meaning of this Agreement.

These investments must be made according to the laws and regulations in force in the host country.

If the investment is made by an investor referred to in paragraph 2 below, in which he has an equity interest, such investor shall enjoy the benefits of this Agreement to the extent of such indirect interest, provided, however, that such benefits shall not accrue to him if he invokes the dispute settlement mechanism provided for in another foreign investment protection agreement concluded by a Contracting Party in whose territory the investment is made.

2. The term "investor" means:

- a) Any natural person having the Egyptian or Malian nationality, by virtue respectively, of the law of the Arab Republic of Egypt, or of the Republic of Mali, who is investing in the territory of the other Contracting Party;
- b) Any juridical person, having its social seat, respectively in the territory of the Arab Republic of Egypt, or of the Republic of Mali, which is investing in the territory of the other Contracting Party;
- c) Legal entities established in accordance with the laws of any country which are controlled directly or indirectly by nationals of a Contracting Party or by legal entities having their headquarters, together with actual economic activities, in the territory of this Contracting Party; it is understood that control requires a significant share of ownership.

3. The term "incomes" refers to the net tax amounts reported by an investment, including but not limited to profits, dividends and royalties;

4. The term "territory" means the national territory and territorial waters of each Contracting Party and the economic zone and the continental shelf that extends outside the territorial waters of each of the Contracting Parties, over which they have jurisdiction and rights pursuant to international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its laws and regulations.

2. Investments by investors of one Contracting Party in the territory of the other Contracting Party shall enjoy fair and equitable treatment from the other Contracting Party and, subject to the measures strictly necessary for the maintenance of the public order, full protection and security. Each Contracting Party undertakes to ensure that the management, maintenance, use and enjoyment of the investments of the other Contracting Party in its territory are not impeded by unjustified and discriminatory measures.

Income from investment and, in the case of reinvestment in accordance with the legislation of a Contracting Party, shall enjoy the same protection as the initial investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure in its territory investors of the other Contracting Party fair and equitable treatment, which shall not be less favourable than that which it accords to the investments of its own investors or to the investments of the most favoured nation, if the latter is more favourable.

Each Contracting Party shall insure in its territory, for investors of the other Contracting Party, in respect of activities relating to their investments, a treatment no less favourable than that which is accorded to its own investors, or investors of any third State, the most favourable treatment being chosen.

2. The treatment of the most favoured nation shall not apply to privileges which a Contracting Party agree to investors of a third State by virtue of its participation or association in a free trade zone, economic union or customs, a common market or any other form of regional economic integration, or a similar international agreement or a Convention for the avoidance of double taxation in respect of taxes or any other convention relating to taxes.

Article 4. Expropriation and Compensation

1. Investments by investors of one Contracting Party may not be expropriated, nationalized or otherwise effected in the territory of the other Contracting Party, the effects of which shall be equivalent to those of expropriation or nationalization only for reasons of public utility.

2. The Contracting Party taking such measures shall pay to the rightful claimant, without undue delay, fair and equitable compensation the amount of which shall be the market value of the investment concerned on the day before the day on which the measures are taken or rendered public.

3. The provisions for the fixing or payment of the indemnity shall be taken promptly at the latest at the time of the expropriation. In the event of late payment, the indemnity will bear interest on market conditions from the date of its payment. The indemnity will be paid to investors in convertible and freely transferable currency.

Article 5. Compensation for Losses

Investors of one of the Contracting Parties whose investments would suffer damage to war-related losses in any other armed conflict, revolution, state of national emergency, revolt, insurrection, or any other similar event in the territory of the Contracting Party, shall enjoy from the part of the latter of non-discriminatory treatment and at least equal treatment to that accorded to its own investors or investors of the most favoured nation in respect of refunds, compensation, compensation to other compensation, the most favourable treatment being retained.

Article 6. Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall

guarantee to investors, after payment of the tax obligations, the free transfer in convertible currency and without undue delay of the liquid assets relating to their investments and in particular:

- a) Capital of an additional amount to maintain or increase the investment;
- b) Profits, dividends, interest, royalties and other current income;
- c) Sums necessary for the repayment of loans relating to the investment;
- d) The proceeds of a total or partial liquidation of the investment;
- e) Compensation due under Articles 4 and 5;
- f) An appropriate rate of wages and other remuneration accruing to the citizens of one Contracting Party who have been authorized to work in the territory of the other Contracting Party in respect of an investment.

2. The transfers referred to in paragraph 1 shall be made at the rate of exchange applicable on the date of transfer, and in accordance with the exchange regulations in force.

3. The guarantees provided for in this article are at least equal to those granted to investors of the most favoured nation who are in similar situations.

Article 7. Subrogation

1. If a Contracting Party or one of its agencies makes a payment to one of its investors under a guarantee or an insurance contract made by it in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favour of this Contracting Party of its organization has, to any right or title of the investor.

2. A Contracting Party or one of its agencies which is subrogated to the rights of an investor in accordance with paragraph (1) of this Article shall in all circumstances enjoy the same rights as the investor in respect of the investment and the income relating thereto. The rights in question may be exercised by the Contracting Party or the body or by the investor if the Contracting Party or body so authorizes.

Article 8. Applicable Rules

When a question related to investment is governed both by this Convention and by the national legislation of one of the Contracting Parties or by existing or future International Conventions of the Parties, the investors of the other Contracting Party may avail themselves of the provisions which are most favourable to them.

Article 9. Settlement of Investment Disputes

1. Any dispute relating to investments between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably by consultations and negotiations between the parties to the dispute.

2. In the absence of an amicable settlement by direct agreement between the parties to the dispute within a period of six months, from the date of its written notice, the dispute shall be submitted, at the option of the investor:

- a) To the competent court of the Contracting Party in whose territory the investment is made;
- b) To arbitration at the International Center for the Settlement of Investment Disputes (ICSID), established by the Convention for the Settlement of Disputes Concerning Investments between States and Nationals of Other States, signed in Washington on March 18th, 1965.

To this end, each of the Contracting Parties shall give irrevocable consent that any dispute relating to investments be submitted to this arbitration procedure.

3. None of the Contracting Parties, at any stage of the arbitration procedure or the execution of an arbitration award, may raise any objection, because the investor, party to the dispute, has received an indemnity covering all or part of his losses under an insurance policy.

4. The Arbitral Tribunal shall, on the basis of the national law of the Contracting Party to the dispute, determine, in the territory of which the investment is located, including the rules relating to conflicts of laws, the provisions of this Convention, terms of the particular agreements to be concluded on the subject of investment and the principles of international law.

5. Arbitral awards are final and binding on the parties to the dispute. Each Contracting Party undertakes to execute such awards in accordance with its national laws.

Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute relating to investments between a Contracting Party and an investor of the other Contracting Party shall, as far as possible, be settled amicably by consultations and negotiations between the parties to the dispute.

2. Failing this, the dispute is submitted to a joint commission made up of representatives of the parties; this commission shall meet without delay, at the request of the most diligent party.

3. If the joint commission can not settle the dispute within six months from the commencement of the negotiations, it shall be submitted to an arbitral tribunal at the request of one of the Contracting Parties.

4. The arbitral tribunal shall be constituted as follows: each Contracting Party shall appoint an arbitrator who shall be a national of a third State as President of the Tribunal. The arbitrators shall be appointed within three (3) months, the President, within five (5) months from the date on which one of the Contracting Parties has communicated to the other Contracting Party his or her intention to submit a dispute to an arbitral tribunal.

5. If the time limits fixed in paragraph (4) above have not been observed, either Contracting Party shall invite the President of the International Court of Justice to make the necessary nominations. If the President of the Court fails, the Vice-President of the International Court of Justice will be invited to make the necessary appointments. If the Vice President is a national of any of the Contracting Parties, or if any reason preventing from performing the task mentioned, the most senior in the International Court of Justice, which is not a national of one of the Contracting Parties, will be invited to make the necessary appointments.

6. The Arbitral Tribunal rules on the basis of the provisions of this Convention and the rules and principles of International Law. The decision of the court will be adopted by the majority of votes. It is final and binding on the Contracting Parties.

7. The court shall set its own rules of procedure.

8. Each Contracting Party shall bear the costs of its arbitrator and its representation in the arbitration proceedings. The costs of the President and other expenses shall be borne by the Contracting Parties in equal shares.

Article 11. Application

This Agreement shall also cover, as far as its future application is concerned, investments made in foreign currency, before its entry into force, by investors of one of the Contracting Parties in the territory of the other Contracting Party, in accordance with its laws and regulations. However, this Agreement shall not apply to any dispute which may arise before its entry into force.

Article 12. Entry Into Force, Validity and Termination

This Convention shall be subject to ratification and shall enter into force thirty (30) days from the date of receipt of the last of the two notifications concerning the completion by both Contracting Parties of the constitutional procedures in their respective countries.

This Agreement will remain in force for a period of ten (10) years.

Unless one of the Contracting Parties denounces it at least six months before the termination of its period of validity, it shall be tacitly renewed for a further period of ten years; each Contracting Party reserves the right to denounce it by written notification at least six (6) months prior to the termination date of the current period of validity.

Investments made prior to the termination date of this Agreement shall remain covered for a period of ten years from the said date of termination.

Done in Bamako, on Monday 9/3/1998

In two original copies, in Arabic and French, both being equally authentic.

For the Government of Arab Republic of Egypt

For the Government of Republic of Mali